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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,501	07/11/2003	Joseph L. Owades	OW-24	3988
27667	7590	07/14/2004	EXAMINER	
HAYES, SOLOWAY P.C. 130 W. CUSHING STREET TUCSON, AZ 85701			PRYOR, ALTON NATHANIEL	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/617,501	Applicant(s) OWADES, JOSEPH L.	
	Examiner Alton N. Pryor	Art Unit 1616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,4-7 and 9-18 is/are rejected.
- 7) ☐ Claim(s) 2,3 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

Applicant's arguments filed 4/26/04 have been fully considered but they are not persuasive. See arguments below.

II. Rejection of claims 1,4-6 under 35 USC 102(b) as being anticipated by Jereb will be maintained for reason on record and reason as follows. Applicant argues that Jereb uses precipitated sulfur; whereas, the instant invention employs colloidal (suspended or dispersed) sulfur. Examiner argues that solubility wise sulfur is not soluble in diketone and would therefore Jereb's combination of sulfur in diketone would result in sulfur being suspended or dispersed in the diketone. Therefore, Examiner argues that Jereb's precipitated sulfur in diketone is equivalent to the instant dispersed or suspended sulfur in diketone since in both cases the sulfur would be insoluble in diketone. Applicant provides Weiser's definition of colloidal sulfur. However, Weiser's definition does not exclude precipitated sulfur as being colloidal sulfur. Jereb's composition comprising precipitated sulfur in diketone is applied to treat skin conditions such as acne. It is therefore inherent that such application of Jereb's composition would alleviate itching.

II. Claim Rejection under 35 USC 103(a)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 7,9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jereb in view of Trenzeluk (US 4880627; 11/14/89) as applied to claims 1,4-6 above. See 35 USC 102(b) rejection above. Jereb teaches all that is recited in claims 7,9-18 except for the instant invention comprising alcohol, propylene glycol and glycerol monostearate. Jereb also does not teach the instant amounts of sulfur and diketone. However, Trenzeluk teaches a composition for treating acne comprising cetyl alcohol, propylene glycol and glycerol monostearate. See abstract, Example #3, claim 7. It would have been obvious to one having ordinary skill in the art to modify the invention taught by Jereb to include the cetyl alcohol, propylene glycol, and glycerol monostearate taught by Trenzeluk. One would have been motivated to do this in order to develop a more effective composition for treating skin related diseases. With respect to amounts, one having ordinary skill in the art would have been expected to determine the optimum amounts of ingredients. One would have been motivated to do this in order to develop the most effective invention for treating skin related diseases such as acne.

II. Objection to claims 2,3 is maintained for reason on record in paper dated 3/23/04. Claim 7 is added to this objection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is

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filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

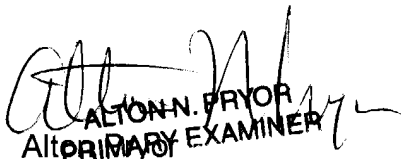
***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



ALTON N. PRYOR  
Alt PRIMARY EXAMINER  
Primary Examiner  
AU 1616